IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 42 OF 2007

MRS. RUTH GONSALVES FURTADO ... Appellant
Versus
COMMISSIONER OF INCOME TAX AND ANR., ... Respondents

Mr. D. E. Robinson and Melwyn J. Aguiar, Advocate for the appellant.

Mr. S. R. Rivonkar, Advocate for the respondents.

Coram:- R. S. MOHITE &
N. A. BRITTO, JJ.

Date:- 16th July, 2007

P.C.

Heard both sides. This is an appeal impugning the Order dated 19th January, 2007 passed by the Incometax Appellate Tribunal, Panaji Bench, Panaji dismissing the appeal bearing ITA No.130/PNJ/2006.

2. It was the case of the appellant that she had entered into an agreement of sale dated 11.4.2001 with her two sons and had agreed to sell to each of them 1/3rd of the undivided share which was for a consideration of Rs.10,00,000/-. The assessee offered long term capital gain of Rs.89,687/- and 1/3rd of the total rent received was offered for tax. The remaining 2/3rd was offered for tax by the sons equally in their respective cases.

3. The Tribunal and the lower authority found that there was no sale deed executed and there was no evidence filed to prove that the transaction has been entered into the Municipal Corporation's records. The arrangement was held to be more in the nature of a family arrangement with a view to reduce the tax liability. It was held that in

the facts of the case, there was no transfer in terms of Section 2(47)(v)/(vii) of the Incometax Act. It was noticed that as per clause (6) of the Agreement dated 11.3.04, the two sons were specifically forbidden from assigning, transferring , mortgaging, hypothecating or otherwise alienating their respective shares in any manner till the consideration was fully paid. It was only on full payment of consideration that they would have a right of pre-emption or sale or transfer. It was observed that neither any consideration was received from the sons nor any constructive possession or enforceable right was conferred on the sons.

4. Before us, it has been sought to be contended that under the agreement, the sons had been enabled to enjoy the property in question within the meaning of Section 269 UA(f)(ii) of the Act. On the facts of this case, it is clear that the original lessee had not agreed to pay 2/3rd rent directly to the sons. Admittedly, there is no registration of the document and hence, no rights of ownership passed to the sons. Even, otherwise, under the agreement sons are specifically forbidden from assigning, transferring , mortgaging, hypothecating or otherwise dealing with the property as mentioned in the said clause. There is no substantial question of law which has been raised. Hence, the appeal is dismissed.

R. S. MOHITE, J.

N. A. BRITTO, J.

ssm.